

compare similar compositions not containing the low level of jojoba oil. The added jojoba oil substantially reduces blistering as seen in Table 2.

**Examiner's Rejection of Claims Under 35 U.S.C. § 102(b).** The Examiner has rejected Claims 17, 18, 21-25, and 35 under U.S.C. §102(b) as being anticipated by WO 96/22182 ("*Muenstermann*"). Claims 17, 18, 21-25 and 35 are directed to a method of improving a molded polyurea's blister resistance by the addition of jojoba oil. This ground for rejection is respectfully traversed.

**a. The Claims are not anticipated.**

The present application is not anticipated by the cited reference. To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477, 44 U.S.P.Q.2d 1429, 1431.

Claims 17, 18, 21-25 and 35 of Applicant are method of use claims, not composition claims. Claims directed to a method of use are patentable if the claimed usage is previously unknown. *See* 35 U.S.C. §101, *See also In re Hack*, 245 F.2d 246, 248, 114 U.S.P.Q. 161, 163 (C.C.P.A. 1957)(a discovery or invention of a *new use* of a known process, machine, manufacture, composition of matter or material may be patentable). Claims 17, 18, 21-25 and 35 of Applicant are directed to a novel method of improving blister resistance. *Muenstermann* discloses an internal release composition for molded polymer which may contain jojoba oil. As set forth in lines 8-10 of page 4 of *Muenstermann*, the mixture of "a metal salt of a carboxylic acid and jojoba oil performs not only as an effective internal mould release agent but also does not degrade the polyurethane catalyst in fully formulated RIM system." No disclosure is made in *Muenstermann* that blister resistance may be increased by the presence of the jojoba oil in the formulation. As such, *Muenstermann* is not an anticipatory reference because it fails to disclose:

- a.) improvement of a molded polyurea's blister resistance by the use of jojoba oil;
- b.) at a temperature of at least 390° F;
- c.) for a period of time of at least 20 minutes and no longer than 60 minutes.

Each of these limitations is set forth in Claims 17, 18, 21-25 and 35. Note that Table 2 on page 21 of the originally filed specification demonstrates no improvement in blistering when the oven temperature is set at 375° F (190° C) as compared to the oven temperature set at 390° F (199° C).

**b. Blister resistance is not inherent.**

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of the characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993). Further, "the extrinsic evidence, 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.'" *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-1951 (Fed. Cir. 1999) (quoting *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2d 1746, 1749 (Fed. Cir. 1991)). The Examiner has failed to provide "a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990).

The anti-blistering characteristic of polyurea polymer with jojoba oil is not inherent in *Muenstermann*. *Muenstermann* does not hint, much less disclose, the ability of jojoba oil to affect blistering. Rather, *Muenstermann* merely discloses a method of making a molded polymer more easily removable from its mold. *Muenstermann* has no relation to the claims of Applicant; one skilled in the art of polyurea polymers would not look to *Muenstermann* to solve the problem related to blistering.

The anti-blistering must necessarily be present in the reference and must be recognized by persons of ordinary skill. See *In re Robertson* at 1950-1951. The results of the anti-blistering by the claimed jojoba oil containing composition are unexpected. A person of ordinary skill would not have recognized the ability of jojoba oil to enhance blister-resistance based on *Muenstermann*.

**c. Claims 18, 19 and 24 are not anticipated.**

Even if independent Claim 17 is anticipated by *Muenstermann*, which it is not, dependent Claims 18, 19, and 24 are not anticipated by *Muenstermann*. Claim 18 is directed to a polyurea-polymer mixture having an isocyanate index between 1.05 and 1.40. *Muenstermann* does not

recite the isocyanate index. It is known that isocyanate level affects blistering but as the level increases the compound becomes more brittle. See Applicant's Specification p.16, line 4 – 8. The present invention allows the isocyanate level to be increased without increasing brittleness. *Muenstermann* does not disclose the claimed isocyanate index, therefore it does not anticipate.

In addition, Claims 19 and 24 are not anticipated by *Muenstermann* because *Muenstermann* fails to disclose a mixture containing a polyepoxide (Claim 19); and the ability of the polyurea, when exposed to mixture, taking up no more than 2 weight percent water based on the weight of the molded polyurea polymer (Claim 24).

**Examiner's Rejection of Claims Under 35 U.S.C. 103(a).** The Examiner has further rejected Claims 19, 33, 34, and 36-45 under 35 U.S.C. 103(a) as being unpatentable over *Muenstermann* in view of U.S. Patent 5,525,681 ("*Barron*"). This ground of rejection is likewise traversed.

The Examiner admits that *Muenstermann* fails to recite use of a polyurea formulation in the production of automobile parts as well as the addition of polyepoxides to the polyurea formulation. (Paragraph 6 of page 4 of Office Action.) The Examiner argues that it would have been obvious to combine *Muenstermann* with *Barron* because *Barron* "discloses that automobile parts are fabricated from polyurea RIM compositions." See Paragraph 6 of the Office Action. Applicant respectfully disagrees.

When considering an obviousness rejection, the Examiner cannot "pick and choose among the individual elements of assorted prior art references to recreate the claimed invention," but rather, the Examiner must look for "some teaching or suggestion in the references to support their use in the particular claimed combination." See *SmithKline Diagnostics, Inc. v. Helena Lab. Corp.*, 859 F.2d 878, 887 (Fed. Cir. 1988). The Examiner has not provided a proper motivation to combine the cited references. *Muenstermann* and *Barron* attempt to solve two different issues. *Muenstermann* is directed to an internal release composition for polyurethane molding. *Barron* recites a more stable, blister-resistant polyurethane. The problems presented in the two references are distinctly different, such that one skilled in the art would not look to one for improvement of the other. If one of skill in the art wanted to go outside *Barron* for assistance, they would not look to *Muenstermann*, which does not disclose or teach a better method of blister-resistance. *Pro-Mold and Tool Co. v. Great Lakes Plastics, Inc.*, 75 F.3d 1568,

1573 (Fed. Cir. 1996) (citing *ACS Hosp. Sys.*, 732 F.2d 1572, 1577 (Fed. Cir. 1984). ("It is well established that before a conclusion of obviousness may be made based on a combination of references, there must have been a reason, suggestion, or motivation to lead an inventor to combine those references."))

Independent Claim 36 is directed to a "blister-resistant molded automobile body part. . . such that when said molded automobile body part is exposed to moisture and a temperature of at least about 390° F (199° C), said molded automobile body part is substantially free of blisters" Independent Claim 41 is directed to a "method of making a blister-resistant molded automobile body part" including jojoba oil in an amount "effective for providing blister resistant to said molded automobile body part such that when said molded automobile body part is exposed to moisture and a temperature of at least about 390° F (199° C), said automobile body part is substantially free of blisters." As set forth *supra*, Table 2 on page 21 of the originally filed specification demonstrates no improvement in blistering when the oven temperature is set at 375° F (190° C) as compared to the oven temperature set at 390° F (199° C). Even if the combination of *Muenstermann* and *Barron* would proper, which it is not, claim limitations to the critical temperature of 390° F (199° C) would not be met.

**Examiner's Rejection of Claims Under Second Paragraph 35 U.S.C. § 112.** The Examiner has rejected Claims 17-19, 21-25, and 33-45 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Examiner cites the language "at least about" and "no more than about" as language that renders the claim indefinite. This ground for rejection is respectfully traversed.

The objectionable phrases are acceptable for two reasons. First, one of ordinary skill in the art having read Applicant's claims and specifications would understand what is meant by the phrases "at least" and "no more than" when they modify "about". These terms are not intended to definitively limit the claimed values. The phrases, rather, indicate whether the values are intended to define an upper limit or a lower limit.

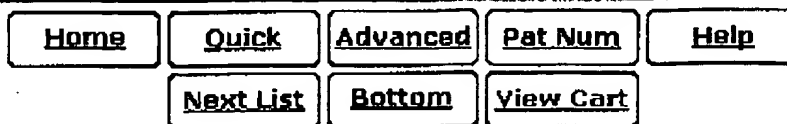
Second, the phrases "at least about" and "no more than about" are widely accepted terms in the claims of patents. A brief search in the Patent Office database for the term "at least about" contained in the claims revealed 19,094 patents. A brief search in the Patent Office database for

the term "no more than about" contained in the claims revealed 1,954 patents. Attached to this Communication is a list of the most recent 50 patents for each phrase. It is clear from these lists that these terms are not only widely used but also widely accepted by the U.S. Patent and Trademark Office.

For the above reasons, Applicant respectfully disagrees with the Examiner and requests that the claims be reconsidered.

#### CONCLUSIONS

For the stated reasons, reconsideration is respectfully requested. Though Applicant does not believe that any fee is necessary, the Commissioner is hereby authorized to charge or credit the Deposit Account No. 12-1322 of Locke Liddell & Sapp LLP under Order No. 019131-03210. In light of the foregoing remarks, the claims of the application have been distinguished over the cited references. The Examiner is requested to contact the undersigned at (713) 226-1142 should he deem it necessary to advance the prosecution of this application.

**USPTO PATENT FULL-TEXT AND IMAGE DATABASE**

Searching 1996-2002...

Results of Search in 1996-2002 db for:

ACLM/"at least about": 19094 patents.

Hits 1 through 50 out of 19094



ACLM/"at least about"

PAT. NO.	Title
1 6,456,640	■ <u>Gallium nitride type semiconductor laser device</u>
2 6,456,455	■ <u>Damped spacer articles and disk drive assemblies containing damped spacer articles</u>
3 6,456,214	■ <u>High-speed comparator utilizing resonant tunneling diodes and associated method</u>
4 6,455,939	■ <u>Substantially hillock-free aluminum-containing components</u>
5 6,455,934	■ <u>Polymeric dielectric layers having low dielectric constants and improved adhesion to metal lines</u>
6 6,455,916	■ <u>Integrated circuit devices containing isolated dielectric material</u>
7 6,455,844	■ <u>Single-atom detection of isotopes</u>
8 6,455,835	■ <u>System, method, and program product for acquiring accurate object silhouettes for shape recovery</u>
9 6,455,816	■ <u>Merchandise system and method for controlling the drying of previously baked goods</u>
10 6,455,762	■ <u>Methods of modifying lignin in plants by transformation with a 4-coumarate coenzyme a ligase nucleic acid</u>
11 6,455,750	■ <u>Process for selectively producing light olefins</u>
12 6,455,749	■ <u>Method for increasing light olefin yield by conversion of a heavy hydrocarbon fraction of a product to light olefins</u>
13 6,455,747	■ <u>Method for converting oxygenates to olefins</u>
14 6,455,739	■ <u>Production of 4-fluorobenzaldehyde</u>
15 6,455,722	■ <u>Process for the production of pentaerythritol phosphate alcohol</u>
16 6,455,718	■ <u>Halogen exchange reactions in preparing catalysts and their precursors</u>
17 6,455,716	■ <u>Process for the branching of saturated and/or unsaturated fatty acids and/or alkyl esters</u>

thereof

- 18 6,455,682 ■ DNA mobility modifier
- 19 6,455,638 ■ Ethylene/alpha-olefin polymer blends comprising components with differing ethylene contents
- 20 6,455,634 ■ Pressure sensitive adhesive blends comprising (meth)acrylate polymers and articles therefrom
- 21 6,455,632 ■ Aqueous polyurethane dispersions containing secondary amide groups and their use in one-component thermoset compositions
- 22 6,455,620 ■ Polyether containing polymers for oxygen scavenging
- 23 6,455,614 ■ Chlorine-free, zero voc, waterborne adhesion promoter for polyolefinic substrates
- 24 6,455,526 ■ Biodegradable polymer encapsulated pharmaceutical compositions and method for preparing the same
- 25 6,455,512 ■ Water-soluble esterified hydrocolloids
- 26 6,455,463 ■ Alkaline earth/transition metal lean NOx catalyst
- 27 6,455,459 ■ Antimony catalyst compositions
- 28 6,455,441 ■ Sputtered insulating layer for wordline stacks
- 29 6,455,427 ■ Method for forming void-free metallization in an integrated circuit
- 30 6,455,418 ■ Barrier for copper metallization
- 31 6,455,334 ■ Probe grid for integrated circuit analysis
- 32 6,455,301 ■ Erythritol--producing Moniliella strains
- 33 6,455,295 ■ Subtilisin Carlsberg variants having decreased adsorption and increased hydrolysis
- 34 6,455,287 ■ Mechanical disruption of bacterial cells for plasmid recovery
- 35 6,455,260 ■ Biological assays for analyte detection
- 36 6,455,254 ■ Sequence based screening
- 37 6,455,231 ■ Dry film photoimageable compositions
- 38 6,455,210 ■ Aqueous thermally beachable composition useful in a photothermographic element
- 39 6,455,166 ■ Metallic substrates for high temperature superconductors
- 40 6,455,149 ■ Peat pellets
- 41 6,455,148 ■ Composite panel with a foamed plastic core
- 42 6,455,130 ■ Nanoporous dielectric films with graded density and process for making such films
- 43 6,455,129 ■ Single-ply embossed absorbent paper products
- 44 6,455,094 ■ Treatment of food products using humidity controlled air
- 45 6,455,086 ■ Microorganism reduction methods and compositions for food cleaning
- 46 6,455,080 ■ Chewing gum containing controlled release acyclic carboxamide and method of making
- 47 6,455,076 ■ Formulations and methods for reducing skin irritation
- 48 6,455,060 ■ S(+)-desmethylelegiline and its use to treat immune system dysfunction
- 49 6,455,055 ■ Cosmetic compositions
- 50 6,454,989 ■ Process of making a crimped multicomponent fiber web

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Searching 1996-2002...

**Results of Search in 1996-2002 db for:****ACLM/"no more than about": 1954 patents.****Hits 1 through 50 out of 1954**

ACLM/"no more than about"

PAT. NO.	Title
1 <a href="#">6,455,957</a>	■ <a href="#">Encoder</a>
2 <a href="#">6,455,935</a>	■ <a href="#">Asymmetric, double-sided self-aligned silicide</a>
3 <a href="#">6,455,750</a>	■ <a href="#">Process for selectively producing light olefins</a>
4 <a href="#">6,455,722</a>	■ <a href="#">Process for the production of pentaerythritol phosphate alcohol</a>
5 <a href="#">6,455,142</a>	■ <a href="#">Anti-fog coating and coated film</a>
6 <a href="#">6,455,129</a>	■ <a href="#">Single-ply embossed absorbent paper products</a>
7 <a href="#">6,454,935</a>	■ <a href="#">Method for desulfurizing gasoline or diesel fuel for use in a fuel cell power plant</a>
8 <a href="#">6,454,744</a>	■ <a href="#">Peelable PTFE sheaths and methods for manufacture of same</a>
9 <a href="#">6,454,741</a>	■ <a href="#">Aspiration method</a>
10 <a href="#">6,454,298</a>	■ <a href="#">Low volume roof rail air bag</a>
11 <a href="#">6,453,850</a>	■ <a href="#">Electrical apparatus for discouraging animals from licking</a>
12 <a href="#">6,453,099</a>	■ <a href="#">Multi-stranded fiberoptic light delivery system with smooth color transitioning</a>
13 <a href="#">6,451,969</a>	■ <a href="#">Methods for inhibiting tumor metastasis, and peptides useful therefor</a>
14 <a href="#">6,451,306</a>	■ <a href="#">Methods for therapy of neurodegenerative disease of the brain</a>
15 <a href="#">6,451,290</a>	■ <a href="#">Products and methods for the remineralization and prevention of demineralization of teeth</a>
16 <a href="#">6,451,075</a>	■ <a href="#">Low lead aviation gasoline blend</a>
17 <a href="#">6,450,899</a>	■ <a href="#">Multi-layer ionomeric golf ball containing filler and method of making same</a>
18 <a href="#">6,450,627</a>	■ <a href="#">Simplified ink jet head</a>
19 <a href="#">6,450,234</a>	■ <a href="#">Holder for a depending hollow architectural covering</a>

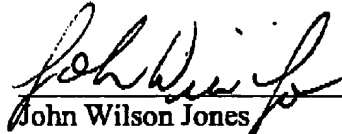


- 20 6,450,130 Multiuse safety restraint for pets and method of construction
- 21 6,449,093 ■ Optical bodies made with a birefringent polymer
- 22 6,448,464 ■ Absorbent article which maintains skin temperature when wet
- 23 6,447,788 ■ Honey herb bath solution
- 24 6,447,663 ■ Programmable nanometer-scale electrolytic metal deposition and depletion
- 25 6,447,531 ■ Method of forming medical devices; intravascular occlusion devices
- 26 6,447,459 ■ Device and method for measuring lung performance
- 27 6,446,381 ■ Fishing lure
- 28 6,445,545 ■ Apparatus for minimizing head off-track due to disk flutter
- 29 6,444,939 ■ Vacuum switch operating mechanism including laminated flexible shunt connector
- 30 6,444,586 ■ Method of etching doped silicon dioxide with selectivity to undoped silicon dioxide with a high density plasma etcher
- 31 6,444,075 ■ Hot melt calendered or extruded wear layer for embossed substrates and method of manufacture
- 32 6,443,557 ■ Chip-carrier for improved drop directionality
- 33 6,440,470 ■ Elemental enteral nutritional product
- 34 6,440,467 ■ Infused vegetable, herb, and/or seed fiber product and dietary supplements containing same
- 35 6,440,266 ■ Production of reactive material containing webs
- 36 6,440,222 ■ Sugar beet membrane filtration process
- 37 6,440,101 ■ Syringe systems for lyophilized drugs and methods for making the same
- 38 6,439,711 ■ Ballistic aerosol marking process employing marking material comprising polyester resin and poly (3,4-ethylenedioxythiophene)
- 39 6,439,286 ■ Vehicular pneumatic tire and process of making vehicular pneumatic tire
- 40 6,438,931 ■ Power lawn mower including shortened control arms for use in deck lift system
- 41 6,436,231 ■ Method and apparatus for crosslinking individualized cellulose fibers
- 42 6,436,211 ■ Gas generant manufacture
- 43 6,435,096 ■ Method and apparatus for controlled small-charge blasting by decoupled explosive
- 44 6,434,287 ■ Low loss wavelength selective optical switch
- 45 6,433,397 ■ N-channel metal oxide semiconductor (NMOS) driver circuit and method of making same
- 46 6,433,302 ■ Method and apparatus for marking containers using laser light
- 47 6,433,039 ■ Ink jet printing with inks containing comb polymer dispersants
- 48 6,432,897 ■ Reduced residue hard surface cleaner
- 49 6,432,833 ■ Method of forming a self aligned contact opening
- 50 6,432,336 ■ Flexible graphite article and method of manufacture

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Respectfully submitted,

DATED: October 1, 2002


  
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**CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. § 1.6(d)**

I hereby certify that this correspondence is, on the date shown below, being transmitted to the United States Patent and Trademark Office, Commissioner of Patents and Trademarks, Box AF, Washington, D.C. 20231, attention Examiner Rabon A. Sergeant, via facsimile at (703) 305-5408.

DATED: October 1, 2002

  
Jana Walraven

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